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In the
Supreme Court of the United States

October Term, 1968

No. 455

ANTHONY CAPERCI, ET AL.,
PETITIONERS,

v.

EARL P. HUNTOON, JR., ET AL.,
RESPONDENTS.

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinions Below

The opinion of the Court of Appeals (Pet. 10-12) has not been officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on July 11, 1968. (Pet. 13.) The petition for a writ of certiorari was filed on August 29, 1968. The jurisdiction of this court is invoked under 28 U.S.C. s. 1254 (1).

Questions Presented

Whether in a state where punitive damages are not recoverable unless authorized by statute, such damages may be recovered in a civil action under the Civil Rights Act of 1871, 42 U.S.C. s. 1983.

Statutes Involved

42 U.S.C. s. 1983, provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Statement

On May 29, 1962, respondent Earl P. Huntoon, Jr., who in October, 1960, was a sergeant on the police force of the city of Quincy, Massachusetts, and his wife brought an action in the United States District Court for the District of Massachusetts against other members of the force, some of whom are petitioners herein, seeking damages under the Civil Rights Act of 1871, 42 U.S.C. s. 1983, for conduct which the Court of Appeals described as "an outrageous invasion of (respondents' constitutional right to) . . . privacy without color of right and for an improper motive."[1] (R. 4-35.)[2]

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[1] Pet. 12.

[2] "R." refers to the "Record Appendix to Brief for Appellants" in the Court of Appeals.

After an extensive jury trial, the jury returned a number of special verdicts in favor of respondents to the effect that petitioners[3] had participated in three unconstitutional searches and seizures and for compensatory and punitive damages.[4] (R. 97-99, 106-109.)

At the trial, there was evidence from which the jury could have found the following:

On October 14, 1960, respondent Huntoon, who had been a member of the Quincy police department for ten years and a sergeant for a little over four years, was arrested when he reported for duty at about 4:50 p.m. and detained at the police station. Between 5 and 6 p.m., five of the petitioners, supported by a search warrant obtained by a sixth petitioner, "then visited his home and conducted a search," which "markedly exceeded the bounds of the warrant. Nothing was taken." (Pet. 10; R. 121-127; 9 Tr. 13-14; 1 Tr. 88-98)[5]

At 10:30 that evening, the petitioner who had obtained the warrant and one of the petitioners, who had participated in the first illegal search, "accompanied by a civilian returned to (respondents') . . .home and demanded admission. Upon being admitted, they searched the deep freezer in the basement. Again, nothing was taken. Later, at 1:30 a.m., a substantial number of (petitioners) . . . came to (respondents') . . .home and demanded admission. At this time they conducted a rigorous search and removed over 200 articles, ranging from shoe laces and shirts to

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[3] Some special verdicts were in favor of some defendants, who obviously have not questioned those verdicts.

[4] Respondent Huntoon recovered from seven petitioners, jointly, a total of $5,002, as compensatory damages, and from five petitioners, severally, $7,500 in the aggregate, as punitive damages. His wife recovered from the same seven petitioners, jointly, a total of $16,000, as compensatory damages, and from five petitioners, severally, $5,000 in the aggregate, as punitive damages.

[5] "Tr." refers to the transcript of the trial.

pencils and tools. Concededly, on neither of these latter occasions did they have a warrant or any probable cause entitling them to obtain one. Much less did they have a right to enter and search, . . ." (Pet. 10-11; 1 Tr. 99-102; 2 Tr. 11-23; 7 Tr. 82-83; 8 Tr. 48, 51, 53, 83.)

Respondent Huntoon was held in custody until 4:30 a.m. Present "in his home during all three searches were his wife, (the co-respondent) . . .herein, and a 14-year old daughter." (Pet. 11; 9 Tr. 13-14.)

There was ample evidence to support the verdicts for compensatory damages (Pet. 8-9); and petitioners did not in the Court of Appeals and do not now contend otherwise. (Pet. 2, 11.)

As to the verdicts for punitive damages (Pet. 8-9), there was evidence that petitioners, "for an improper motive" and without any information either that respondent Huntoon had participated in any crimes or that any stolen articles were in his home, applied for and obtained the search warrant used for the first search, and participated in the three illegal searches and "removed over 200 articles, ranging from shoe laces and shirts to pencils and tools" in the hope that they might be able, at some later date, to establish that some of those articles were stolen. (Pet. 1-12; R. 143-202, 215-231; 2 Tr. 139; 6 Tr. 45, 47, 70-71, 86; 7 Tr. 61-63, 77-84, 137-140; 8 Tr. 5-6, 13-16, 40, 64-66, 77-84, 110-118, 144; 9 Tr. 14-19, 130-134; 11 Tr. 28.)

Nor did petitioners, who subsequently applied for and prosecuted criminal complaints for larceny and receiving stolen goods in the local police court have any information, let alone evidence, at the time applications for criminal complaints were made or later, that any of the articles seized from respondents' home and described in those complaints had been stolen or that respondent Huntoon was connected in any way with any crimes. Nevertheless, on January 13, 1961, the local police court found probable

cause on all of those complaints and held respondent Huntoon for a superior court grand jury. (R. 143-166; 6 Tr. 70; 8 Tr. 15-16, 115-116, 118.)

Later, nine indictments were returned against respondent Huntoon charging him with a number of offenses, involving the same articles which had been the subject of the police court complaints. He was ultimately acquitted under seven of those indictments and discharged on the remaining two when they were quashed. (R. 143-202, 215-217, 219-231; 6 Tr. 56-59; 8 Tr. 144.)

Argument

While the Civil Rights Act of 1871 is, as petitioners point out, silent as to the kind of damages that may be awarded for a violation of civil rights, every federal court, including the court below, that has had occasion to consider whether punitive damages are recoverable in such an action has answered that question in the affirmative. *Mansell* v. *Saunders*, 372 F. 2d 573, 576 (5 Cir. 1967); *Basista* v. *Weir*, 340 F. 2d 74, 87-88 (3 Cir. 1965); *Hague* v. *Comm. For Industrial Organ.*, 101 F. 2d 774, 789 (3 Cir. 1939), modified on other grounds, 307 U.S. 496, 59 S. Ct. 954; *Tracy* v. *Robbins*, 40 F.R.D. 108, 113 (D.S.C. 1966), appeal dismissed, 373 F. 2d 13; *Washington* v. *Official Court Stenographer*, 251 F. Supp. 945, 947 (E.D. Pa. 1966); *Antelope* v. *George*, 211 F. Supp. 657, 660 (N.D. Idaho 1962).

It is true that in each of the states in which those other federal cases arose, punitive damages are recoverable under local law. See, e.g., *Fisher* v. *Miami*, Fla., 172 So. 2d 455, 457; *Esmond* v. *Liscio*, 209 Pa. Super. 200, 224 A. 2d 793, 799-800; *Winkler* v. *Hartford Acc. & Indem. Co.*, 66 N.J. Super. 22, 168 A. 2d 418, 421-422; *Laird* v. *Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E. 2d 206; *Williams* v.

Bone, 74 Idaho 185, 259 P. 2d 810. It is equally true that in Massachusetts, "punitive damages are not allowed unless authorized by statute." *Lowell* v. *Massachusetts Bonding & Ins. Co.*, 313 Mass. 257, 269, 47 N.E. 2d 265, 272.

But none of the other federal courts, which permitted the recovery of punitive damages for a violation of the Civil Rights Act, applied local law. Those courts recognized the well-established principle that "when a federal statute condemns an act as unlawful the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. *To the federal statute and policy, conflicting state law and policy must yield.*" *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173, 176, 63 S. Ct. 172, 174; *J. I. Case Co.* v. *Borak*, 377 U.S. 426, 433, 84 S. Ct. 1555, 1560, and cases cited. (Emphasis supplied.)

It is because of that principle that this Court has held, contrary to the urging of petitioners in the case at bar that the doctrine of *Erie Railroad* v. *Tomkins*, 304 U.S. 64, 58 S. Ct. 817, has no application where "federally secured rights are involved." *Id.*, 317 U.S. at 176, 63 S. Ct. at 174.

The Court of Appeals merely followed that well-entrenched principle when it said:

". . .However we believe, on balance, that the remedial purpose of the Act is better served by not permitting local variations allowing diminution of the amount of recovery. Rather, we will look to federal common law." (Pet. 11-12.)

Conclusion

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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